

In the Matter of Merchant Mariner's Document No. Z-979222 and  
all other Documents  
Issued to: EMILIO SANCHEZ

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

911

EMILIO SANCHEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 12 April 1956, an Examiner of the United States Coast Guard at Long Beach, California, suspended Merchant Mariner's Document No. Z-979222 issued to Emilio Sanchez upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a wiper on board the American SS MISSISSIPPI under authority of the document above described, at about 1000 on 20 February 1956, he assaulted and battered the Chief Engineer when he entered the quarters of Sanchez.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by nonprofessional counsel of his own choice and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Chief Engineer and two other members of the crew who were not eyewitnesses to the incident in issue.

Appellant also testified at the hearing. He stated that the Chief Engineer knocked Appellant to the deck and struck him eight or ten times while Appellant remained on the deck.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-979222, and all other documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of nine months-three months outright suspension and six months suspension on probation until eighteen months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby

make the following

### FINDINGS OF FACT

On 20 February 1956, Appellant was serving as a wiper on board the American SS MISSISSIPPI and acting under authority of his Merchant Mariner's Document No. Z-979222 while the ship was at Long Beach, California.

Appellant was required to commence performing his duties at 0800 on 20 February 1956 but he did not return to the ship until approximately 1000. Appellant was heard to remark that he would give the Chief Engineer a beating if he rebuked Appellant for being late. Upon hearing that Appellant had returned on board, the Chief Engineer went to the wipers' quarters and told Appellant that he was discharged for being late. Appellant blocked the exit from the room and commenced striking the Chief Engineer on his face. The Chief Engineer struck back to the extent that was necessary in order to leave the room. Both men were slightly injured.

Appellant has no prior record.

### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the findings of fact and conclusions are contrary to the weight of the evidence; and that the order is excessive since the Chief Engineer suffered very minor injuries.

Appearance on Appeal: James W. Randolph, Esquire, of New York City, of Counsel

### OPINION

The Examiner, as the trier of the facts, resolved the matter of credibility in favor of the Chief Engineer by accepting his version of the incident. The Examiner concluded that Appellant was the aggressor and that the Chief Engineer acted in self-defense. There is nothing in the record which suggests that this determination by the Examiner should be rejected. As was stated in KILGUST v. United States (C.C.A. 2, 1951), 191 F. 2d 69, 70

"We have again and again said that the question presented in cases such as this [choice of conflicting testimony] is one of fact that the trial judge is preeminently fitted to decide and that we will not reverse his decision in the absence of a clear showing of error."

Since disrespect shown for ship's officers affects the high standards of discipline which is required on shipboard, the order is considered to be lenient rather than excessive. The offense of assault and battery against the Chief Engineer was a serious one regardless of the fact that his injuries were minor.

ORDER

The order of the Examiner dated at Long Beach, California, on 12 april 1956 ~~A~~AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 5th day of SEPTEMBER, 1956.